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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ANGIE G.,)	2 CA-JV 2011-0121
)	DEPARTMENT B
)	
Appellant,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 28, Rules of Civil
)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC)	
SECURITY, GABRIEL R., and)	
LILLIANA G.,)	
)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J198303

Honorable Susan A. Kettlewell, Judge Pro Tempore

AFFIRMED

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V Á S Q U E Z, Presiding Judge.

¶1 Angie G., mother of Gabriel and Lilliana, born in 2007 and 2011, challenges the juvenile court’s October 2011 order adjudicating the children dependent. On appeal, Angie contends there was insufficient evidence to support the court’s finding that the children are dependent as to her. For the reasons that follow, the court’s order is affirmed.

¶2 In the dependency petition it filed in May 2011, the Arizona Department of Economic Security (ADES) alleged Gabriel was dependent because Angie had failed to protect him from Francisco, her boyfriend and the alleged father of Lilliana; Francisco had choked Gabriel and placed a pillow over his face; Angie knew Gabriel was frightened of Francisco, but “continued to facilitate contact” between the children and Francisco; and, Angie failed to comply with a safety plan that required her and the children to live with the maternal grandmother, and to have no contact with Francisco. A dependent child is a child determined to be “[i]n need of proper and effective parental care and control and who has no parent or guardian . . . willing to exercise or capable of exercising such care and control,” or “[a] child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent.” A.R.S. § 8-201(13)(a)(i), (iii). Section 8-201(2), A.R.S., further defines “abuse” as “the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior.”

¶3 We review the juvenile court’s order adjudicating a child dependent for an abuse of discretion. *See In re Pima Cnty. Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). We will affirm “unless the findings upon which it is based are clearly erroneous and there is no reasonable evidence supporting them.” *In re*

Pima Cnty. Juv. Dependency Action No. 118537, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994). ADES must prove by a preponderance of the evidence that a child is dependent before the court may so adjudicate the child. *See id.*; Ariz. R. P. Juv. Ct. 55(C).

¶4 On appeal, Angie does not dispute that the abusive conduct took place, but instead argues that, because the incidents of abuse occurred before August 2010, they were too remote in time to support the dependency adjudication. She asserts that she had ended her relationship with Francisco in December 2010, months before the dependency petition was filed in May 2011, and that “[t]he court was clearly erroneous in finding that incidents over one year old could be the basis of a dependency.”

¶5 We view the evidence on appeal in the light most favorable to sustaining the court’s findings. *See Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005). We do not reweigh the evidence presented at the dependency hearing because, as the trier of fact, the juvenile court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). At the hearing, the children’s maternal grandmother, Margaret, testified that Gabriel appeared “terrified” and “paranoid” when the family would drive near Francisco’s residence, forcing them to seek an alternate route. Margaret also testified that Gabriel had told her he could not breathe when Francisco had placed a pillow over his face, an incident Angie had dismissed as “rough play[.]” when Margaret told her about it. Margaret testified that Gabriel did not tell Angie about the pillow incident because he believed his mother would not listen to him; in fact, he had told Margaret on other occasions “my mommy don’t listen.” Gabriel also told Margaret that

Francisco would “flick” him on the ear, that he was “tired” of Francisco making Angie cry and “being mean to [him],” and that Francisco had locked him on the balcony until Angie came home from work. Gabriel once called Margaret from Francisco’s house and told her, “I can’t take it no more . . . I’m packing [m]y bag . . . I don’t want to be here no more.”

¶6 Although Angie acknowledged that Margaret had reported Gabriel’s fear of Francisco to her while she was still living with Francisco, she testified she did not believe he was harming Gabriel. And, even after Margaret had told Angie about the pillow incident, Angie continued to leave Gabriel with Francisco two or three times per week while she was at work. Despite testifying that her relationship with Francisco had ended in December 2010, Angie nonetheless testified that she had continued to visit Francisco’s mother, and that Francisco would “show up” at his mother’s home when she was there. She also testified she had continued to let Francisco borrow her vehicle.

¶7 Angie had agreed to comply with a safety plan established by Child Protective Services (CPS), which required her to reside with the children at Margaret’s home and to ensure she and the children did not have contact with Francisco. However, Angie moved out of Margaret’s home without notice just after the safety plan had begun, failed to provide any care for the children, and did not advise CPS of her whereabouts. In fact, Angie did not tell CPS where she was living until August 2011, the month the dependency hearing took place. Angie also waited until a day or two before the hearing started to attend her first individual counseling session and to obtain an order of protection against Francisco.

¶8 Gabriel’s father, Manuel Rojas, testified that Gabriel was “fearful” when he drove the child near Francisco’s home and explained that he had called CPS in March or

April 2011, after Gabriel had told him Francisco had “grab[bed his] throat,” an action Gabriel illustrated by demonstrating a choking motion. Finally, CPS professionals testified that Angie had not demonstrated sufficient progress to ensure the children would be safe in her care.

¶9 After the contested dependency hearing on August 25 and 26, 2011, the juvenile court entered an order in which it set forth extensive factual findings, and found: “Gabriel was subjected to physical abuse and emotional abuse” by Francisco; although Angie was aware of Francisco’s treatment of Gabriel, she “did not take appropriate steps to protect Gabriel from the potential for additional physical and/or emotional abuse,” and thus failed to protect him; and, Angie’s “failure to appreciate the emotional and physical abuse to Gabriel further establishes that [she] would not recognize similar abuse to Lilliana, who is an infant, and [Angie] would therefore fail to protect Lilliana from abuse and neglect.” *See In re Pima Cnty. Juv. Dependency Action No. 96290*, 162 Ariz. 601, 604, 785 P.2d 121, 124 (App. 1990) (conditions creating dependency to other children in home may pose imminent risk of harm to child at issue). The court further found that, despite Angie’s recent efforts to address the safety issues impacting her children, there was insufficient evidence she had benefitted from available services “to such a degree that she would be able to protect the children from physical or emotional abuse at the hands of another.”

¶10 Based on the record before us, there is reasonable evidence to support the juvenile court’s conclusion that both Gabriel and Lilliana are dependent children. And we are not persuaded by Angie’s argument that, merely because the incidents of abuse may have occurred in the year before ADES filed the dependency petition, the children are not dependent. *Cf. id.* (parents’ present denial of past abuse supports finding parents

presently unwilling to care for children because “[t]o hold otherwise would permit an abusive or neglectful parent to defeat an allegation of dependency by the mere passage of time”). Because there was ample evidence that Angie had not protected Gabriel from ongoing abuse at the hands of Francisco, had not taken the safety plan seriously, and had not taken advantage of the services offered her by CPS until just before the dependency hearing, the court did not err in finding the children dependent.

¶11 The court’s order adjudicating Gabriel and Lilliana dependent is affirmed.

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge